

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

IN THE MATTER OF THE SEARCH OF
INFORMATION ASSOCIATED WITH
FACEBOOK USER ID 100002558504666
THAT IS STORED AT PREMISES
CONTROLLED BY FACEBOOK, INC.

Case No. 3:21-mj-00103

Filed Under Seal

**AFFIDAVIT IN SUPPORT OF
AN APPLICATION FOR A SEARCH WARRANT**

I, Sean McNees being first duly sworn, hereby depose and state
as follows:

INTRODUCTION AND AGENT BACKGROUND

1. I make this affidavit in support of an application for a search warrant for information associated with a certain Facebook user ID that is stored at premises owned, maintained, controlled, or operated by Facebook Inc. ("Facebook"), a social networking company headquartered in Menlo Park, California. The information to be searched is described in the following paragraphs and in Attachment A. This affidavit is made in support of an application for a search warrant under 18 U.S.C. §§ 2703(a), 2703(b)(1)(A) and 2703(c)(1)(A) to require Facebook to disclose to the government records and other information in its possession, pertaining to the subscriber or customer associated with the user ID.

2. I am currently employed as a Special Agent with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and have

been so employed since January of 2016. I am assigned to ATF's Charleston, West Virginia, Field Office.

3. I have investigated cases involving firearms-related offenses, arson, crimes of violence, crimes involving individuals conspiring to obtain or use firearms to commit felony offenses, the illegal sale, possession and use of firearms during the commission of these criminal acts, as well as the use, distribution, and possession of illegal controlled substances. I have investigated crimes involving the illegal possession of firearms, and the trafficking of assorted controlled substances. I have utilized cooperating individuals to make controlled purchases of firearms and drugs. I have experience and specific training related to the identification of firearms and ammunition, and the function of firearms and destructive devices. I have training and experience that has made me familiar with the appearance, packaging, paraphernalia, and distribution of controlled substances such as, cocaine powder (HCl), cocaine base (crack), heroin, marijuana, LSD, opioid and other pharmaceuticals, methamphetamine and other commonly used street drugs. I am also familiar with tactics utilized by firearms traffickers, and illegal possessors of firearms to distribute, acquire, maintain and possess illegal firearms.

4. I graduated from a ten (10) week criminal investigator training course at the Federal Law Enforcement Training Center, where the course of study dealt with basic criminal investigation techniques. In addition, I graduated from the twelve-week (12) Bureau of Alcohol, Tobacco and Firearms (ATF) National Academy, where a portion of the course of study dealt with violations of federal firearms laws, federal explosives laws, bomb scene investigation and arson investigation.

PROBABLE CAUSE

5. On November 10, 2021, SA McNees was working criminal interdiction with members of the Huntington Police Department Drug and Violent Crime Unit. Investigators were conducting surveillance at 1316 5th Avenue, Huntington, WV, for possible drug activity. While on surveillance, members of the Task Force observed an unknown B/M coming from this location and conducting suspected hand to hand drug transactions to individuals on two separate occasions. Investigators made contact with both individuals and recovered suspected heroin from them that they had purchased from the suspect. One of the individuals identified the supplier of heroin as "Kurt." Both individuals advised that they contacted the heroin supplier at phone number 614-257-8851.

6. Investigators then later observed the same B/M come from the residence and enter a red in color pickup truck as a passenger. A traffic stop was conducted on the truck by HPD Lt. Bowles and Sgt. Eddie Prichard in the 1500 Block of 7th Avenue. All occupants were asked to step from the vehicle. The B/M suspect identified himself as Curtis HAYES. A female, who was also a passenger in the vehicle, was known to investigators to be involved in prior drug related investigations. When questioned, she initially denied having drugs on her person, she then later admitted to having three packets of heroin down her pants and also admitted to purchasing the heroin from HAYES while they were inside his apartment. Investigators recovered the suspected heroin from her.

7. HAYES was verbally advised of his Miranda rights by TFO Hunter. HAYES was informed that there was a drug investigation ongoing involving him and his recent activities. He denied having any drugs on his person but did state that he lived at 1316 5th Avenue. HAYES was placed under arrest at the scene by HPD officers for Delivery of a Controlled Substance.

8. A search incident to the arrest of HAYES at the Huntington Police Department yielded approximately 6.4 grams of suspected heroin concealed on his person, which is a distribution quantity of heroin.

9. A state search warrant was then obtained and executed on HAYES' residence (1316 5th Avenue, Apt. 4, Huntington, WV). During the search, investigators located several plastic baggies and digital scales, which are indicative of narcotics distribution. A loaded, Bryco Arms, model Jennings Nine, 9mm pistol, serial number 1399505 was located on the top shelf of a closet in a bedroom in the apartment, along with several rounds of firearm ammunition that were in a plastic bag next to the firearm. Numerous documents with HAYES' name on them were also located in the same bedroom, along with a holster that was located in a cabinet by the bed.

10. HAYES was later interviewed at the Huntington Police Department by SA McNees and Sgt. Maniskas. HAYES implicated himself in the distribution of heroin for approximately seven (7) to eight (8) months. HAYES approximated that there were days he would sell two (2) to three (3) grams and other days he would sell seven (7) or eight (8) grams. HAYES also admitted to being a heroin user himself. HAYES advised that the bedroom where the firearm was located was his bedroom but denied knowing that the firearm was there. HAYES also acknowledged in the interview that he was a convicted felon.

11. At the time that HAYES was arrested he was in possession of a Samsung, model Galaxy A11 cellphone. On November 19, 2021, A

state search warrant was obtained and was then later executed on the cellphone. Information obtained from the cellphone showed that it did indeed belong to HAYES. Investigators determined this due to multiple photos of HAYES on the cellphone as well as the number for the cellphone being identified as 614-257-8851. In addition, investigators located numerous Facebook Messenger conversations between HAYES and other individuals. HAYES' Facebook Account (herein after "the account") was listed under the name of "Curtis Hayes Jr." (Facebook User ID 100002558504666).

12. Numerous conversations between the account and other individuals discussing the purchase and sale of narcotics were located. The determination that the conversations were about narcotics comes from the training and experience of SA McNees, HAYES' own admissions about selling heroin, as well as the above-mentioned investigative activity involving HAYES that occurred on November 10, 2021. Excerpts from some of the conversations are listed below.

A. On 11/6/2021, "Lenny Jackson" sent a message to the account that stated, "I be there in a minute". The account responded, "I need the bread so I can reup".

B. On 11/10/2021, "Breezy Bri" sent a message to the account that stated, "u Let me grab a g for 80". The account responded "I gotcha if u got me".

C. On 10/29/2021, "Rachel Fairchild" sent a message to the account that stated, "I need a half". The account responded, "14th and 9th in 5 min".

D. On 08/26/2021, "+13045630327" sent a message to the account that stated, "idk if you'll do 20s kind of hate to even ask really", "On 9th n 12 walking". The account responded, "Ok im on 14th".

E. On 03/31/2021, "Elizabeth Barlow" sent a message to the account that stated, "Who waits until Theyre a junkie to get some pride and not be able to talk to people". The account responded, "I have 2 half's left and I really need the cash but let me think about it. I will let u know something in a half hour".

13. According to HAYES' own admission, he had been engaged in selling heroin for approximately seven (7) to eight (8) months. The information obtained from his cellphone showed that he was actively using the account during that time period, which includes the above-mentioned drug related messages.

14. On November 29, 2021, a preservation order was sent to Facebook for profile "Curtis Hayes Jr.", user ID 100002558504666 and referenced under Facebook case number 6568340.

15. Facebook owns and operates a free-access social networking website of the same name that can be accessed at <http://www.facebook.com>. Facebook allows its users to establish accounts with Facebook, and users can then use their accounts to share written news, photographs, videos, and other information with other Facebook users, and sometimes with the general public.

16. Facebook asks users to provide basic contact and personal identifying information to Facebook, either during the registration process or thereafter. This information may include the user's full name, birth date, gender, contact e-mail addresses, Facebook passwords, physical address (including city, state, and zip code), telephone numbers, screen names, websites, and other personal identifiers. Facebook also assigns a user identification number to each account.

17. Facebook users may join one or more groups or networks to connect and interact with other users who are members of the same group or network. Facebook assigns a group identification number to each group. A Facebook user can also connect directly with individual Facebook users by sending each user a "Friend Request." If the recipient of a "Friend Request" accepts the request, then the two users will become "Friends" for purposes of Facebook and can exchange communications or view information about each other.

Each Facebook user's account includes a list of that user's "Friends" and a "News Feed," which highlights information about the user's "Friends," such as profile changes, upcoming events, and birthdays.

18. Facebook users can select different levels of privacy for the communications and information associated with their Facebook accounts. By adjusting these privacy settings, a Facebook user can make information available only to himself or herself, to particular Facebook users, or to anyone with access to the Internet, including people who are not Facebook users. A Facebook user can also create "lists" of Facebook friends to facilitate the application of these privacy settings. Facebook accounts also include other account settings that users can adjust to control, for example, the types of notifications they receive from Facebook.

19. Facebook users can create profiles that include photographs, lists of personal interests, and other information. Facebook users can also post "status" updates about their whereabouts and actions, as well as links to videos, photographs, articles, and other items available elsewhere on the Internet. Facebook users can also post information about upcoming "events," such as social occasions, by listing the event's time, location, host, and guest list. In addition, Facebook users can "check in" to particular locations or

add their geographic locations to their Facebook posts, thereby revealing their geographic locations at particular dates and times. A particular user's profile page also includes a "Wall," which is a space where the user and his or her "Friends" can post messages, attachments, and links that will typically be visible to anyone who can view the user's profile.

20. Facebook allows users to upload photos and videos, which may include any metadata such as location that the user transmitted when s/he uploaded the photo or video. It also provides users the ability to "tag" (i.e., label) other Facebook users in a photo or video. When a user is tagged in a photo or video, he or she receives a notification of the tag and a link to see the photo or video. For Facebook's purposes, the photos and videos associated with a user's account will include all photos and videos uploaded by that user that have not been deleted, as well as all photos and videos uploaded by any user that have that user tagged in them.

21. Facebook users can exchange private messages on Facebook with other users. Those messages are stored by Facebook unless deleted by the user. Facebook users can also post comments on the Facebook profiles of other users or on their own profiles; such comments are typically associated with a specific posting or item on the profile. In addition, Facebook has a chat feature that

allows users to send and receive instant messages through Facebook Messenger. These chat communications are stored in the chat history for the account. Facebook also has Video and Voice Calling features, and although Facebook does not record the calls themselves, it does keep records of the date of each call.

22. If a Facebook user does not want to interact with another user on Facebook, the first user can "block" the second user from seeing his or her account.

23. Facebook has a "like" feature that allows users to give positive feedback or connect to particular pages. Facebook users can "like" Facebook posts or updates, as well as webpages or content on third-party (*i.e.*, non-Facebook) websites. Facebook users can also become "fans" of particular Facebook pages.

24. Facebook has a search function that enables its users to search Facebook for keywords, usernames, or pages, among other things.

25. Each Facebook account has an activity log, which is a list of the user's posts and other Facebook activities from the inception of the account to the present. The activity log includes stories and photos that the user has been tagged in, as well as

connections made through the account, such as "liking" a Facebook page or adding someone as a friend. The activity log is visible to the user but cannot be viewed by people who visit the user's Facebook page.

26. Facebook also has a Marketplace feature, which allows users to post free classified ads. Users can post items for sale, housing, jobs, and other items on the Marketplace.

27. In addition to the applications described above, Facebook also provides its users with access to thousands of other applications ("apps") on the Facebook platform. When a Facebook user accesses or uses one of these applications, an update about that the user's access or use of that application may appear on the user's profile page.

28. Facebook also retains Internet Protocol ("IP") logs for a given user ID or IP address. These logs may contain information about the actions taken by the user ID or IP address on Facebook, including information about the type of action, the date and time of the action, and the user ID and IP address associated with the action. For example, if a user views a Facebook profile, that user's IP log would reflect the fact that the user viewed the

profile, and would show when and from what IP address the user did so.

29. Social networking providers like Facebook typically retain additional information about their users' accounts, such as information about the length of service (including start date), the types of service utilized, and the means and source of any payments associated with the service (including any credit card or bank account number). In some cases, Facebook users may communicate directly with Facebook about issues relating to their accounts, such as technical problems, billing inquiries, or complaints from other users. Social networking providers like Facebook typically retain records about such communications, including records of contacts between the user and the provider's support services, as well as records of any actions taken by the provider or user as a result of the communications.

30. As explained herein, information stored in connection with a Facebook account may provide crucial evidence of the "who, what, why, when, where, and how" of the criminal conduct under investigation, thus enabling the United States to establish and prove each element or alternatively, to exclude the innocent from further suspicion. In my training and experience, a Facebook user's IP log, stored electronic communications, and other data

retained by Facebook, can indicate who has used or controlled the Facebook account. This "user attribution" evidence is analogous to the search for "indicia of occupancy" while executing a search warrant at a residence. For example, profile contact information, private messaging logs, status updates, and tagged photos (and the data associated with the foregoing, such as date and time) may be evidence of who used or controlled the Facebook account at a relevant time. Further, Facebook account activity can show how and when the account was accessed or used. For example, as described herein, Facebook logs the Internet Protocol (IP) addresses from which users access their accounts along with the time and date. By determining the physical location associated with the logged IP addresses, investigators can understand the chronological and geographic context of the account access and use relating to the crime under investigation. Such information allows investigators to understand the geographic and chronological context of Facebook access, use, and events relating to the crime under investigation. Additionally, Facebook builds geo-location into some of its services. Geo-location allows, for example, users to "tag" their location in posts and Facebook "friends" to locate each other. This geographic and timeline information may tend to either inculcate or exculpate the Facebook account owner. Last, Facebook account activity may provide relevant insight into the Facebook account owner's state of mind as it relates to the offense

under investigation. For example, information on the Facebook account may indicate the owner's motive and intent to commit a crime (e.g., information indicating a plan to commit a crime), or consciousness of guilt (e.g., deleting account information in an effort to conceal evidence from law enforcement).

31. Therefore, the computers of Facebook are likely to contain all the material described above, including stored electronic communications and information concerning subscribers and their use of Facebook, such as account access information, transaction information, and other account information.


32. Based on my training and experience and the facts as set forth in this affidavit, there is probable cause to believe that Curtis HAYES Jr. has committed violations of Title 21, U.S.C § 841(a) (1)- Distribution of Heroin. There is also probable cause to search the information described in Attachment A for evidence of these crimes and contraband or fruits of these crimes, as described in Attachment B.

INFORMATION TO BE SEARCHED AND THINGS TO BE SEIZED

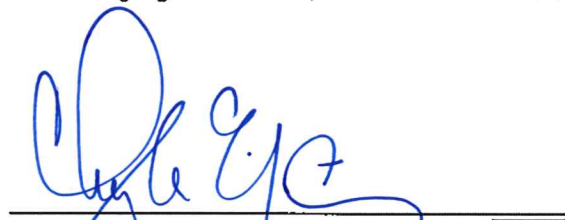
33. I anticipate executing this warrant under the Electronic Communications Privacy Act, in particular 18 U.S.C. §§ 2703(a), 2703(b) (1) (A) and 2703(c) (1) (A), by using the warrant to require Facebook to disclose to the government copies of the records and

other information (including the content of communications) particularly described in Section I of Attachment B. Upon receipt of the information described in Section I of Attachment B, government-authorized persons will review that information to locate the items described in Section II of Attachment B.

Further your affiant sayeth naught.


SA Sean A. McNees

Sworn to before me, and subscribed in my presence, this 10th day of December, 2021.


Cheryl A. Eifert
United States Magistrate Judge